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land on foreclosure of a deed of trust, evidence held insufficient to show that the trustee sold the land as a whole at a sacrifice, instead of in four parcels under an agreement with the debtor.

3. Same—Stifling Bidding—Burden of Proof.—While an agreement tending to lessen bidding at an auction sale of land sold under foreclosure of a deed of trust is illegal, the burden is on the party attacking the validity of the sale therefor, of proving the same by clear and satisfactory evidence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 35, Mortgages, § 1098.]

4. Same—Sale—Vacation—Accounting.—Where the fullest accounts had been made up between the debtor and creditor and the vouchers had been turned over to the debtor who had possession of them for many years, and on the day of the sale of land on foreclosure the exact amount of the indebtedness was computed in the debtor's presence with the assistance of his counsel, without any suggestion impugning the correctness of the debt, it was not error to refuse to order an accounting in a proceeding by the debtor to set aside the sale.

5. Usury—Elements—Periodical Settlements.—Where a debtor and creditor had settlements from time to time bringing in new items of debit, and interest was calculated on past due accounts, and a new bond secured by a deed of trust taken for the whole, such transaction did not constitute usury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 47, Usury, § 100.]

HOT SPRINGS LUMBER & MFG. CO. v. REVERCOMB.

Nov. 22, 1906.

[55 S. E. 580.]

1. Navigable Waters—What Constitutes Navigability.—A stream is a navigable or floatable one if, by the increased precipitation at seasons, recurring periodically with reasonable certainty, the flow of water will be sufficient to be substantially useful to the public for transportation.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Navigable Waters, § 9.]

2. Same—Floatage of Logs.—One floating logs in a navigable stream was not liable for injuries to a riparian owner from the piling up of the logs on his land if due and ordinary care was used to prevent injury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Navigable Waters, §§ 251, 253; vol. 33, Logs and Logging, § 50.]

3. Same—Action of Riparian Owner—Declaration—Sufficiency.—In an action by a riparian owner against a booming company the

declaration alleged that defendant carelessly and negligently permitted logs being floated by defendant in the stream to pile up on the banks in heaps or jams, which turned the water from the channel upon plaintiff's land. Held, that the declaration was demurrable in that it failed to charge facts constituting negligence.

BLACK'S ADM'R *v.* VIRGINIA PORTLAND CEMENT CO.

Nov. 22, 1906.

[55 S. E. 587.]

1. Master and Servant—Risks Assumed.—In an action for an injury resulting in the death of plaintiff's intestate while employed in defendant's quarry, it appeared that the rock which fell on deceased had been loose for some time, and that there was a water seam around it, which was seen by other employees working in the quarry at a place removed from the place at which deceased was put to work. Defendant's inspector, whose duty it was to keep the quarry in a safe condition, testified that the condition of the rock could have been seen from certain places, but not from where deceased was at work, and that he had never inspected it, as he did not suppose it would be dangerous. Held, that the risk was not one that was assumed by defendant as incident to his employment.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 557.]

2. Same—Places for Work—Knowledge of Master.—Proof that the master, in the discharge of his duty to keep the place where his servant is required to work in a reasonably safe condition could, by the exercise of reasonable or ordinary care, have ascertained that the place was not reasonably safe, is proof of knowledge on his part that it was not safe.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 966.]

3. Same—Action for Injury—Issues and Proof.—In an action for injuries to a servant employed in defendant's quarry, where the declaration alleged that it was the duty of defendant to keep and maintain its quarry in a reasonably safe condition, and that it neglected this duty, plaintiff was entitled to show that defendant had failed to make proper inspection of its quarry just prior to the injuries.

4. Same—Fellow Servants—Superintendence.—Where the duty of a stone company to keep its quarry in a reasonably safe condition devolved upon its foreman, whose duty it was to inspect the quarry, in the discharge of such duty such foreman was not the fellow servant of workmen in the quarry.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, §§ 393, 456-465.]